CHAPTER 794

An Act to amend and reenact §§ 17.1-275.12, 18.2-67.5:1, 18.2-346, 18.2-348, 18.2-356, 18.2-359, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, and 18.2-374.3 of the Code of Virginia, relating to sodomy; penalties.

[S 14]

Approved April 23, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-275.12, 18.2-67.5:1, 18.2-346, 18.2-348, 18.2-356, 18.2-359, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, and 18.2-374.3 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-275.12. Additional fee for Internet Crimes Against Children Fund.

In addition to the fees provided for by §§ 16.1-69.48:1, 16.1-69.48:1.01, 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.5, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, and 17.1-275.11, a fee of ~~$10~~ *$15* upon each felony or misdemeanor conviction shall be assessed as court costs. All fees collected pursuant to this section shall be deposited into the state treasury and credited to the Internet Crimes Against Children Fund.

There is hereby established in the state treasury the Internet Crimes Against Children Fund. Such fund shall consist of all fees collected under this section, moneys appropriated directly to the Fund, and any other grants or gifts made to the Fund. Moneys in the Fund shall be disbursed in the following manner: to the Virginia State Police, 33.3333 percent of the total annual deposits to support the Northern Virginia Internet Crimes Against Children program; to the Department of Criminal Justice Services, 33.3333 percent of the total annual deposits to support the Southern Virginia Internet Crimes Against Children program; to the Department of Criminal Justice Services, 27.7777 percent of the total annual deposits to support grants and training and equipment for local law-enforcement agencies' use in investigating and prosecuting Internet crimes against children; and to the Department of Social Services, 5.5555 percent of the total annual deposits to support the Virginia Child Protection Accountability System established under § 63.2-1530.

§ 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense.

When a person is convicted of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, a violation of § 18.2-371 involving consensual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* with a child, indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, or a violation of § 18.2-130, and it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the ~~ten-year~~ *10-year* period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, he ~~shall be~~ *is* guilty of a Class 6 felony.

§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties.

A. Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in violation of § 18.2-361, *performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in anal intercourse* or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, *perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in anal intercourse* and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

§ 18.2-348. Aiding prostitution or illicit sexual intercourse, etc.

It ~~shall be~~ *is* unlawful for any person or any officer, employee, or agent of any firm, association, or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation, or prostitution within ~~this~~ *the* Commonwealth~~;~~, or *to* procure or assist in procuring for the purpose of illicit sexual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* or any act violative of § 18.2-361, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.

§ 18.2-356. Receiving money for procuring person.

Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* or any act in violation of § 18.2-361 or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography ~~shall be~~ *is* guilty of a Class 4 felony.

§ 18.2-359. Venue for criminal sexual assault or where any person transported for criminal sexual assault, attempted criminal sexual assault, or purposes of unlawful sexual intercourse, crimes against nature, and indecent liberties with children; venue for such crimes when coupled with a violent felony.

A. Any person transporting or attempting to transport through or across ~~this~~ *the* Commonwealth~~,~~ any person for the purposes of unlawful sexual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* or prostitution, or for the purpose of committing any crime specified in § 18.2-361 or 18.2-370, or for the purposes of committing or attempting to commit criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4, may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.

B. Venue for the trial of any person charged with committing or attempting to commit any crime specified in § 18.2-361 or 18.2-370 or sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 may be had in the county or city in which such crime is alleged to have occurred or, with the concurrence of the attorney for the Commonwealth in the county or city in which the crime is alleged to have occurred, in any county or city through which the victim was transported by the defendant prior to the commission of such offense.

C. Venue for the trial of any person charged with committing or attempting to commit criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 against a person under 18 years of age may be had in the county or city in which such crime is alleged to have occurred or, when the county or city where the offense is alleged to have occurred cannot be determined, then in the county or city where the person under 18 years of age resided at the time of the offense.

D. Venue for the trial of any person charged with committing or attempting to commit (i) any crime specified in § 18.2-361 or 18.2-370 or criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 and (ii) any violent felony as defined in § 17.1-805 or any act of violence as defined in § 19.2-297.1 arising out of the same incident, occurrence, or transaction may be had in the county or city in which any such crime is alleged to have occurred or, with the concurrence of the attorney for the Commonwealth in the county or city in which the crime is alleged to have occurred, in any county or city through which the victim was transported by the defendant in the commission of such offense.

§ 18.2-361. Crimes against nature; penalty.

A. If any person carnally knows in any manner any brute animal~~, or carnally knows any male or female person by the anus or by or with the mouth,~~ or voluntarily submits to such carnal knowledge, he ~~or she shall be~~ *is* guilty of a Class 6 felony~~, except as provided in subsection B~~.

B. Any person who performs or causes to be performed cunnilingus, fellatio, anilingus, or anal intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

C. For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes step-child, and grandchild includes step-grandchild.

§ 18.2-368. Placing or leaving wife for prostitution; penalty.

Any person who, by force, fraud, intimidation, or threats, places or leaves~~,~~ or procures any other person to place or leave his wife in a bawdy place for the purpose of prostitution or unlawful sexual intercourse, ~~shall be~~ *anal intercourse, cunnilingus, fellatio, or anilingus is* guilty of pandering, punishable as a Class 4 felony.

§ 18.2-370. Taking indecent liberties with children; penalties.

A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other

place, for any of the purposes set forth in the preceding subdivisions of this ~~section~~ *subsection*.

B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material~~;~~ ~~shall be~~ *is* guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section ~~shall be~~ *is* guilty of a Class 4 felony~~;~~, provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. Any parent, step-parent, grandparent, or step-grandparent who commits a violation of either this section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild, or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild, or step-grandchild less than 15 years of age is guilty of a Class 4 felony.

§ 18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship; penalties.

A. Any person 18 years of age or older who, except as provided in § 18.2-370, maintains a custodial or supervisory relationship over a child under the age of 18 and is not legally married to such child and such child is not emancipated who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child; or (ii) proposes to such child the performance of an act of sexual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* or any act constituting an offense under § 18.2-361; or (iii) exposes his or her sexual or genital parts to such child; or (iv) proposes that any such child expose his or her sexual or genital parts to such person; or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person; or (vi) sexually abuses the child as defined in *subdivision 6 of* § 18.2-67.10 ~~(6),~~ ~~shall be~~ *is* guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section ~~shall be~~ *is* guilty of a Class 5 felony~~;~~, provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant.

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition ~~which~~ *that* renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228~~,~~ or (ii) engages in consensual sexual intercourse *or anal intercourse* with *or performs cunnilingus, fellatio, or anilingus upon or by* a child 15 or older not his spouse, child, or grandchild~~,~~ ~~shall be~~ *is* guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. As used in subsections C, D, and E, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.

B. It ~~shall be~~ *is* unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or 18.2-374.1. A violation of this subsection is a Class 6 felony.

C. It ~~shall be~~ *is* unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child younger than 15 years of age to knowingly and intentionally:

1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Propose to such child the performance of an act of sexual intercourse, *anal intercourse, cunnilingus, fellatio, or anilingus* or any act constituting an offense under § 18.2-361; or

4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any purposes set forth in the preceding subdivisions.

Any person who violates this subsection is guilty of a Class 5 felony. However, if the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age, the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this subsection when the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age shall be punished by a term of imprisonment of not less than 10 years nor more than 40 years, 10 years of which shall be a mandatory minimum term of imprisonment.

D. Any person who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any child he knows or has reason to believe is at least 15 years of age but younger than 18 years of age to knowingly and intentionally commit any of the activities listed in subsection C if the person is at least seven years older than the child is guilty of a Class 5 felony. Any person who commits a second or subsequent violation of this subsection shall be punished by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

E. Any person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child younger than 18 years of age for (i) any activity in violation of § 18.2-355 or 18.2-361, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1 is guilty of a Class 5 felony.

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the Acts of Assembly of 2013 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.